

# SPECIAL LICENSE PLATE REVIEW BOARD

Special Meeting of the Special License Plate Review Board  
Thursday, January 8, 2004 - 10:00 AM to 12:00 PM  
Highways Licenses Building  
Department of Licensing  
1125 Washington St SE, Rm. 413  
Olympia, WA 98507

## MINUTES

### ATTENDEES

Board Members: Senator Mary Margaret Haugen, Senator Luke Esser, Representative Geoff Simpson, Representative Doug Ericksen (*absent*), Dorothy Webster (*via conference call*), Lynda Henriksen, Glenn Cramer

Support Staff: Jennifer Dana

Legislative Staff: Kim Johnson, Page Scott, Diane Schwickerath, Nate Naismith,

Guest Speakers: Linda Moran, AAG; Bill Kehoe DOL;

Public Guests: Pat Dunn, Gayle Frink-Schulz, Kelly Fox, Patrick Halstead, Larry Dzieza, and Thalia Brown

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## I. CALL TO ORDER

### 1. Introductions

*Vice-Chair Senator Mary Margaret Haugen called the meeting to order at 10:08 A.M.*

The Chair Dorothy Webster was unable to attend the meeting due to inclement weather; Vice-Chair Senator Mary Margaret Haugen chaired the meeting.

### 2. Review and approve meeting minutes from the 11/6/2003 meeting. (*Vice-Chair Senator Mary Margaret Haugen*)

*Moved, seconded and carried: to accept the minutes from November 6, 2003.*

### 3. Review and approve meeting agenda. (*Vice-Chair Mary Margaret Haugen*)

*Moved, seconded and carried: to accept agenda.*

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## II. PROGRAM STATUS & IMPLEMENTATION

### 4. Program progress and accomplishments (*Jennifer Dana & Lynda Henriksen*)

Jennifer Dana explained that two new organizations have contact the board regarding the creation of a new plate series. The final version of the application packet is now available on the board's website. Lastly, the only organization to turn

in their completed packet has been the Washington State Law Enforcement Memorial.

#### **5. Open Public Meetings Act (*Linda Moran, ATG*)**

Linda Moran from the Attorney General's Office discussed the Open Public Meetings Act, 42.30 RCW. She discussed her analysis of how this act impacts the board.

After reading the legislation for the board, Linda's legal opinion was that the board is subject to the Open Public Meetings Act, and the board has been currently complying with this act. The first meeting and the meeting held today should be classified as "special" meetings, not "regular". She noted, that if the board were to give notice through the Code Reviser they could publish a schedule of "regular" meetings.

Special meetings must give notice to the public 24 hours in advance of the scheduled meeting. In addition, prior to special meetings, there is a requirement to notify any members of the press that have requested notification through the board. Currently, the board has no requests on file from the media. The Board has been posting the scheduled meetings on the departments website and circulating meeting notices to interested parties.

The purpose of the Open Meetings Act is to keep any board or commission open to the public. It also requires the board to take action in a public setting. This allows the public to know what the board is doing, where the board is conducting business, when the business is conducted, and it allows the public the opportunity to hear and observe the discussion.

Special meetings require the board to take action only on items that are contained on the published agenda for that meeting. The board can discuss new items not on the agenda, but they cannot act or vote on those items.

Regular scheduled meetings require board to set meetings in advance. If the board does not need the scheduled meeting for any reason, that meeting can be canceled and/or re-scheduled as a "special". Most boards and commissions meet on an as needed basis, but they schedule regular meetings. If the board were to set regular scheduled meetings quarterly, by date, time, and place this would allow the agenda to be set the day of or the day before the scheduled meeting. A regular meeting also allows the board to discuss or act on anything.

Open public meetings are defined as, a quorum of the board members getting together and discussing board business.

Some recent case law discussed that if you correspond through email, this act is considered an open public meeting. It is acceptable if Jennifer sends an email to all board members on procedural items, but Linda Moran cautioned against hitting

“reply all”. The penalties are that the action discussed or decided is nullified and possible personal penalties.

**Question:** Dorothy Webster via phone, asked: If I were to send a response to all members that action would be considered a public meeting? Linda Moran stated that yes; it may be a public meeting. There should only be one-way correspondence. Any action that came out of the email discussion would be nullified and other penalties may be applied.

Adversely, if less than four board members (a quorum) are present, it does not qualify as an open public meeting.

**Question:** If the same email were sent out individually to members, would that action be considered a public meeting? No, but Linda Moran stressed that there is often criticism that side conversations are done prior to the meeting. Since there might be conversations prior to the meeting, the discussion or decision would ultimately be made prior to the meeting, and the public would not have been able to listen to the discussion.

**Question:** Senator Haugen asked how is it handled when several members are on other committees, and they are often put together. Linda Moran stated that in their legislative capacity, they should not get together as four and discuss board business. The members should stay in the capacity of the board and the scope of the responsibilities that the Legislature has given board.

If the board would like more latitude, Linda Moran will work with Jennifer Dana on creating regular meetings which would be scheduled, when, where and what time to be filed with the Code Revisers office.

**Question:** Dorothy Webster asked, that if the board were to take a vote at a special meeting, would that vote not be valid? Linda Moran answered, that the vote would only be valid if the item voted on was on the agenda. Any items, which are voted on not on the published agenda, cannot be voted on, they can only be discussed.

If a regular meeting were cancelled, the postponed meeting would be considered a special meeting.

**Action:** Senator Haugen would like a list of suggestions Linda Moran on the Open Public Meetings Act, as well as a notebook for the board items.

**Questions:** Captain Cramer asked, if the board is subject to the public records law, and do personal notes need to be retained by board members?

**Action:** Linda Moran will look into this question to determine if board members specific notes are subject to the public records act. The Open Public Meetings law does not address any retention, but the Public Records Law does.

## **6. Review the boards authority (*Linda Moran, ATG*)**

**Question:** Lynda Henriksen reiterated that one of the questions asked at the first meeting, 11/6/03, was “What is the liability of individual board members?”

Linda Moran stated, that when board members are acting in their official capacity, the board could be named in a lawsuit together or individually. Normally, the process is such that the Attorney General’s (AAG) office defends, and there is not individual liability because the state would indemnify the members. However, if there is misconduct involved or a board member exceeded the scope of their authority, there are times when the AAG would not defend.

The key to members is: A member should act in good faith, act within the scope of board authority and listen to the advice of the AAG.

The AAG goal is to work together with the board and work collaboratively.

If individual liability of the open public meetings act is violated knowingly, the state’s executive ethics law may apply. In addition, the Legislative ethics law, and possibly the state executive law.

**Question:** Lynda Henriksen asked, that given four of the board members are legislators and are very active on special plates, is there any problem with them voting on a plate series they are the sponsor of? No, Linda Moran stated that it was likely intended that the members as legislators, separately, have political responsibilities that are part of their scope as a legislator and inherently not a conflict of interest.

**Question:** Representative Simpson asked, if there is any implicit requirement or direction in the board legislation that the board approves or rejects any applications.

Linda Moran stated, the general criteria is that the board’s primary responsibility is to review application packets turned in and determine if the organization satisfies the criteria of the law and forward that recommendation to the Legislature. Or, if the organization does not meet the criteria, make recommendations to the organization or inform them of what their application lacks.

**Question:** Lynda Henriksen asked, if something was brought to the board, in which the board thought was politically insensitive or the wrong thing to do, but they met the criteria, does the board have the authority to reject the application? In addition, does it then become a legislative issue?

**Action:** Linda Moran will research more to determine if the board’s authority allows the board to make a decision on politically insensitive plate designs.

## **7. Review Memorandum from Kim Johnson**

An overview was given on the written memorandum supplied by Kim Johnson. California's system works in reverse of Washington's system. First, their Legislature passes the bill then the organization applies to the department of motor vehicles. In this situation, since the organization was never able to get to the application process the judge found that the whole system was unconstitutional.

Courts will look at various areas to determine if a free speech violation has occurred. Special plate legislation has become a hot topic and there has not been a consensus in the courts on how to view this. The court will try and determine if government or private speech has taken place. In the situation in California, the judge determined that it was private speech and was subject to a violation.

**Question:** Senator Haugen asked, that since the Washington's board is opposite of California's system, does the board have more protection? Kim Johnson stated, that she cannot directly answer that question, but pointed out that if the board is reviewing objective criteria, then that in itself is regulation of a speech forum. Which is closer to meeting the constitutional requirements.

Linda Moran stated that the general questions was, "Can the board make content based decisions." The criteria that the department currently uses to deny a personalized plate have been looked at over the years from the AAG envisioning a challenge. The reason the department denies those plates is because, we've advised and they discerned it involves speech that is not covered under the Fifth Amendment. Example: obscene things. On the face of it, if the organization meets the criteria, and boards want to deny on basis on content just because they don't like the message, it could be a violation. She does not believe that the board has that responsibility under the Special Plate Review Board law. In addition, since the Legislature makes content-based decisions, it is a political process. Even for board members who are legislators, it is a political minefield that is laden with litigation around the country where the courts are not together on what the right analysis is. It appears to be that the trend is going in favor of a vehicle plate public forum and it's subject to first amendment strict scrutiny by legislative action. If you fail to act you potentially have liability, and if you do act you have liability.

**Question:** Lynda stated, using Choose Life or Sons of Confederacy as examples. "Where one organization has made application and the opposite side did not make application, and the first side is approved, but the opposite side does not turn in an application she has seen litigation." Since the way the law is set up, is the board protected?

Linda Moran commented, that in one case around this issue the opposite group that did not make application was found that they did not have stand-in to challenge, which is a jurisdictional requirement to file a lawsuit.

Kim Johnson stated, that the first trend was if a group hadn't applied or the bill hadn't been introduced they didn't have standing or a right to sue. However, the courts are now moving that it does not matter that the opposite group didn't apply it is determining that there is content based discrimination because if a constituent goes to the licensing office and desires an opposing side it is not available. The courts are still not consistent with the issue. Washington's system was based on numerous states' systems, but it is unique.

**Question:** Senator Haugen suggest, that if the purpose of a license plate were defined would it help against possible litigation. Answer: Linda Moran stated, that it is already in law and would not likely change a litigation decision.

Linda Moran would like to help the board in the clean up bill process, and to address any other items in the law to reinforce the board's authority and make things as content neutral as possible.

**Action:** Dorothy Webster and other members would like to see what criteria are used as applied to the personalized plate decisions. This should be addressed and added to the agenda for the next meeting. Linda Moran, Jerry Andersen, Kim Johnson, and Page Scott will look at the current personalized plates rules and address questions at the next meeting.

**Question:** Luke Esser asked, has the personalized plate decision process been challenged? Answer: No, Lynda Henriksen answered that the current process has a committee who reviews complaints submitted and makes a decision based on their review and analysis.

Linda Moran stated, that there hasn't been a situation similar to the current litigation around the country. The department has mediated with individuals and explains to the plate holder what others may view as the plates meaning.

## **8. Board Rules**

### **a. Review proposed bylaws**

The first rule needs to be changed to allow regular meetings. Delete the reference to an assistant vice-chair.

**Question:** In Open meetings rule 2, can the board meet in executive session.

**Action:** AAG will review the proposed by-laws and make recommendations at the next meeting.

### **b. Review bylaws of the Legislative Transportation Committee**

## **9. Approve Mission Statement**

*Moved, seconded and carried: to accept the mission statement as:*

To create a fair and balanced mechanism that will allow for the evaluation of special license plate applications for possible approval and to make recommendations to the Legislature regarding plate series with inadequate reimbursement levels.

#### **10. Update of “clean up” bill (*Kim Johnson, Senate*)**

Senator Haugen brought up that constituents who have a disability plate would also like to have a special plate; therefore, this area has been added to the clean up bill.

Kim Johnson discussed the draft clean up bill.

Section 1: Addresses the qualification of organizations to apply to the board for a plate. This section now removes the requirement for agencies to have express statutory authority.

Section 2: Addresses the ability of integration of the personalization of special license plates. Constituents would be required to pay both the personalized plate fee and the special plate fee. In addition, they would be administered and subject to the same review and requirements as personalized license plates.

Section 3: Addresses two possible options. The version presented in the clean up bill is to create a special license plate with a disabled emblem in the background. The administration of the disabled emblem would still remain the same.

The alternative would be to create an emblem/sticker vs. a plate. There would be no additional fees for the emblem as required by federal law, but they would be required to pay the special plate fee.

The item of an amendment of allowing a 170 (c) as discussed at the prior meeting on 11/6/03 is not in the bill. A customer service representative from the Internal Revenue Service explained to Kim Johnson that a 170 (c) is not a type of organization, it is individuals ability deduct your contribution to a 501 (c)(3). In order to qualify for the deduction, the organization that you made the deduction to had to qualify as a 501 (c)(3). There might be some confusion that if it were an organization within government they would probably be a 115. All state government operations are tax-exempt, and if your contribution to a 115 is tax deductible is dependent upon if the purpose for which that organization operates: educational, charitable, or a similar purpose as a 501 (c)(3).

This may lead to the conclusion that the Washington State Council for Prevention of Child Abuse and Neglect (WPCAN) will qualify.

**Action:** Linda Moran will discuss with the WCPAN AAG regarding the consideration of their organization applying as a 501 (c)(3).

Lynda Henriksen stated, that perhaps section two and three do not really pertain to the board's authority. In addition, if all three sections of the proposed clean up bill were combined into one bill, it might cause the clean up legislation to not get passed. If this is considered board legislation, the clean up sections should be proposed separately.

Linda Moran affirmed that the clean up legislation related to the board should apply to the scope of the board's authority. Separate items such as disabled persons emblems, and combination personalized and special plates should be kept separate.

Representative Simpson and Senator Haugen agreed that two separate bills would alleviate any possible problems concerning all three sections in one bill. Kim Johnson will make those changes.

Linda Moran suggested that the administrative staff to the board get together to develop suggestions for the board to be discussed at the next meeting on January 26, 2004. She also suggested that perhaps the board's authority could be amended to include the scope of other possible issues, which would affect special plates.

## **11. Implementation Costs (*Bill Kehoe*)**

Bill Kehoe Chief Information Officer for Information Services at the Department of Licensing discussed how the implementation cost would vary from the previous year's forecast as related to the new cost after the computer migration has been completed.

Consistently, 600 hours are used to implement a new plate series into the computer system. Of those 600 hours, 120 hours are Unisys costs. He cautioned to keep in mind that it is not only Unisys programming and there will be substantial savings once the department is moved off the Unisys programming environment. In the budget package those savings were estimated to be approximately 3000 hours per year applied to internal resources in which the department would not be contracting outside the agency.

The 120 hours by itself it is not very much. The department is already absorbing that in fiscal notes by asking for a contract programmer for three months to perform programming on our state wide title and registration systems so we can price and allocate the funds to the appropriate accounts and the department's revenue system for reconciliation purposes. So, we need to look as a department to determine whether we want to absorb more hours as a result of the savings from Unisys, which would lower the cost and not require the department to ask for contractors. The reason we ask for that is all fiscal notes and their impact amongst our other work will determine where we have in-sufficient resources. Then we ask for contract resources, which costs an estimated \$90-\$100 per hour. Given that the department is coming off Unisys and depending upon the implementation time of special plate



bills, the department can apply those Unisys savings to bills like this to lower the cost. Note, that there is still staff cost.

**Question:** Representative Simpson stated that we don't want the Washington State Law Enforcement Memorial to suffer from being the first for the new programming vs. other organizations in future years.

Bill Kehoe recommended that the department come up with a "standard" cost for special plate implementation. Therefore, each bill that would be implemented after the migration would have the "standard" cost charged. The migration will be completed by July 2004. From that point the start of the implementation or programming can be begin.

However, Bill stated, if you wish to implement during the migration, there would be additional cost. If the standard assumptions for implementation were different, that would also cause an increased amount to cover additional programming.

**Action:** Bill Kehoe and the department will discuss the 'standard' cost at the next scheduled board meeting.

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### III. OTHER BOARD BUSINESS

#### 12. Schedule next meeting

*Moved, seconded and carried: to schedule regular quarterly meetings and to schedule a special meeting on January 26, 2004 at the Highways Licenses Building at 9:00 AM in room 413.*

Dorothy Webster and Jennifer Dana will work on the regular quarterly meeting schedule.

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### III. ORGANIZATION PACKETS TO REVIEW

#### 13. Washington State Law Enforcement Memorial (WSLEM)

Jennifer Dana explained that the WSLEM submitted the first completed application packet. They have sufficiently met all general and special organizational requirements. Over two thousand intended purchases with signatures were submitted.

They appropriately proved a short term and long term marketing strategy. In their strategy they continued to utilize radio contacts in the marketing of the plate series. Of special note, the organizers created a database of all intended purchasers with signatures to create a mass mailing once the plate series is created.

Two financial analysis based on an estimated \$100,000 implementation costs as well as a scenario on an estimated \$50,000 implementation cost. In both scenarios, the

WSLEM demonstrated the ability to reimburse the state through plate sales within the first two years.

The plate design displays the symbol of the WSLEM on the mountain background.

Representatives from the WSLEM commented that they have an additional couple hundred of signatures of individuals wishing to purchase the plate. Jennifer Dana stated that she has received numerous emails and phone calls of individuals who signed the signature sheet wishing to purchase the plate. They are very eager to have the ability to purchase the special license plate.

*Motion: by Representative Simpson to approve the WSLEM application packet.*

*Moved, seconded and carried: to approve "unanimously" the WSLEM application packet.*

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#### IV. QUESTIONS/CONCERNS ADDRESSED BY ORGANIZATIONS

##### **14. What is acceptable documentation to demonstrate the inability to pay all start-up costs?**

Jennifer Dana stated that the item was tabled from the last meeting. Currently, she has been asking organizations to submit a letter explaining.

Senator Esser expressed that perhaps the word usage was meant to be ability vs. inability.

The reference to this was found in the rules and clarified that the organization either, submits all implementation costs or submits a two thousand dollar non-refundable fee along with two thousand intended purchases with signatures to the department with a satisfactory demonstration to the department.

Representative Simpson suggested that the section, which references the organization satisfactorily demonstrating the department the inability to pay all implementation costs, be stricken and added as part of the clean up bill. He also added that some organizations might have the ability to pay the costs, but wish to not pay the costs.

Kim Johnson commented that the original bill was written to have organizations primarily pay all startup costs. However, considering that the implementation costs may be too large for some organizations the second option was added.

Lynda Henriksen commented that the Seattle Sonics and Storms requested in 2003 to create a plate series. However, they may have the ability but not wish to pay all the startup costs because they wish to expend the revenue elsewhere.

Senator Haugen suggested that this language get cleaned up.

Kim Johnson will work on amending the law to strike the language which requires the organization to demonstrate to the satisfaction of the department, and allow the organization to choose to either: pay all startup costs, or pay two thousand dollars and acquire two thousand intended purchases with signatures.

**15. Can “electronic” signatures be used for the signature sheet requirement?  
(Jennifer Dana)**

Jennifer Dana commented that even though she researched the ability to do electronic signatures, the board is using a standard form for the signature sheet. This form was approved to keep uniformity. This form does not allow for the ability to use electronic signatures. Therefore, electronic signatures are not an option at this time.

Linda Moran asked is an initiative signer having the ability to use electronic signatures?

No, numerous members stated that initiative signers couldn't use electronic signatures.

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**V. OPEN PUBLIC PRESENTATIONS/INPUT**

16. Washington State Council of Firefighters (WSCFF) representative Kelly Fox discussed their organization's intentions to provide application to the board.

Kelly Fox explained that their organization would be making application at the January 26 meeting. Their organization currently has over six thousand members, and easily anticipates being able to obtain two thousand intended purchases with signatures.

Kelly commented that the firefighter plate series would be made limited to members of the WSCFF.

Senator Haugen asked if any other states only provide the firefighter plates to members only? Yes, Representative Simpson stated that Texas currently offers their plate series to members only. Simpson hopes that the department might use the same type of procedure that is used in Texas. Texas only accepts completed applications from the organization directly. The application must be filtered through the council directly.

Lynda Henriksen commented that the department currently has a similar system for disabled veterans plates. An approval comes from the Department of Veterans Affairs to authorize the applicant to make application through the department for a disabled veteran's license plate.

Senator Haugen also asked if the plate series would be made available to volunteer firefighters? No, Kelly Fox stated that the plate series would be available to members of the WSCFF only.

Kim Johnson commented that this situation might be an example of when additional programming may be needed for the “standard” plate costs.

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## VI. OPEN DISCUSSION

### 17.

Senator Esser asked if the amendments to the application packet had been completed. Yes, Jennifer Dana showed the application packet with the amendments to the application process section.

**Action:** Senator Esser would like the copy of the new application packet.

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## VII. NEXT MEETING

### 18. TBA

The next special board meeting was scheduled for January 26, 2004 to be held at the Department of Licensing in room 413 from 9:00 A.M until 11:00.

Jennifer Dana will work with the Chair, Dorothy Webster to create a regular meeting schedule. This schedule will include the time, date and location of quarterly meetings. This schedule needs to be turned in by January 2, 2004, to the code revisers office to be published.

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**ADJOURN** – *The meeting adjourned at 11:25 A.M.*

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Respectfully Submitted,  
Jennifer Dana  
Licensing Services Manager  
Administrative Support to the Board

*Senator Mary Margaret Haugen*

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Vice Chair's Approval